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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MARILYN NYE, as Personal Representative,
etc.,

Plaintiff and Appellant,

v.

MALAINA LUCIA CERVANTES,

Defendant and Respondent.

D073958

(Super. Ct. No. 37-2017-00034644-
CU-FR-CTL)

APPEAL from a judgment of the Superior Court of San Diego County,

Kenneth J. Medel, Judge. Affirmed.

Pauline E. Villanueva for Plaintiff and Appellant.

Walker Trial Lawyers, Barry M. Walker and Amy M. Oakden for Defendant and
Respondent.

I.

INTRODUCTION

Plaintiff Marilyn Nye appeals from a judgment entered in favor of defendant
Malaina Lucia Cervantes with respect to Nye's petition to annul the marriage between

Cervantes and Nye's brother, David Brooks, after the trial court sustained Cervantes's demurrer to Nye's complaint.¹ The trial court concluded that Nye lacked standing to pursue the nullification of her brother's marriage to Cervantes based on the provisions of the Family Code limiting when a marriage may be annulled and who may seek its annulment.

On appeal, Nye contends that the trial court erred in sustaining Cervantes's demurrer to Nye's complaint; Nye asserts that this court should permit her to pursue the annulment of her brother's marriage to Cervantes based on allegations that Brooks was of unsound mind at the time of the marriage and that Cervantes engaged in fraud in obtaining Brooks's consent to the marriage. According to Nye, because of the existence of, and intersection between, these two circumstances, the statutes should be read to permit her to pursue her claim to annul her brother's marriage. Alternatively, she contends that she should be permitted to pursue the nullification of her brother's marriage as a matter of public policy. We conclude that the language of the relevant statutes is unambiguous and bars Nye's action to annul her brother's marriage to Cervantes. We therefore affirm the judgment of the trial court as to Cervantes.

¹ As we discuss further in section II.B, *infra*, Nye filed suit against Cervantes and two other defendants based on the defendants' conduct with respect to Brooks during the final weeks of Brooks's life.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Factual background*²

In 2007, David Brooks inherited "substantial assets," including multiple homes, duplexes, and multi-unit complexes, after his mother passed away.

Prior to mid-2016, Brooks was "friends with" Cervantes. The two met while Cervantes was bartending at a Veterans of Foreign Wars post in Chula Vista, California. Sometime in mid-2016, Cervantes "broke off virtually all contact with [Brooks] and became romantically involved with a Dr. Stanley Wilbur, a local physician who specializes in Internal Medicine"

In late January 2017, Brooks was admitted to the hospital. He was subsequently diagnosed with organic brain dysfunction and metastatic brain cancer. Brooks also displayed evidence of "chronic long term drug and alcohol abuse." Brooks and his family members were told by doctors that "due to the cancer and organic brain d[y]sfunction, [Brooks] was not competent to sign any documents of legal significance."

In early February 2017, Brooks was moved from the hospital to a rehabilitation and nursing facility in National City, California. Cervantes became aware of Brooks's health problems and began to visit Brooks. She was accompanied by Wilbur during these visits.

² Because we are reviewing this case on appeal from the sustaining of a demurrer, we take the underlying factual background from the allegations of the complaint.

On February 23, 2017, Brooks checked out of the rehabilitation facility.³ Brooks went with Cervantes and Wilbur to Wilbur's home that evening.

Between February 23, 2017 and March 11, 2017, Brooks did not have any contact with Nye.

According to the complaint, on or about February 25, 2017, Brooks and Cervantes were married at Wilbur's home.

On March 1, Wilbur caused Brooks to be transported to Sharp Grossmont Hospital. Brooks was suffering from a variety of ailments, including conditions related to the metastatic cancer, as well as dehydration, pneumonia, and bed sores.

On March 12, 2017, Nye became aware that Brooks was at Sharp Grossmont Hospital. She and other family members went to visit him. At that time, Brooks was unable to speak or move his eyes. Brooks died later that day.

B. Procedural background

Nye filed a complaint against Cervantes, Wilbur, and Sharp Rees-Stealy Medical Group, Inc. on September 19, 2017. Nye alleged a cause of action for fraud (as to all the defendants), elder abuse (as to Wilbur and Sharp Rees-Stealy Medical Group, Inc.), and professional negligence (as to Wilbur and Sharp Rees-Stealy Medical Group, Inc.). Nye included in the complaint a "Petition for Nullity of Marriage" (boldface & some

³ The complaint alleges that Brooks required assistance to do so because "he couldn't even sign his own name."

capitalization omitted), seeking to annul her brother's marriage to Cervantes pursuant to Family Code section 2210.

Cervantes demurred to Nye's complaint, contending that Nye lacked standing to bring the claims alleged against Cervantes and further arguing that Nye failed to allege all of the necessary elements of her claims.

The trial court sustained Cervantes's demurrer, without leave to amend, concluding that Nye lacked standing to bring the claims alleged against Cervantes.

Nye filed a timely notice of appeal.

III.

DISCUSSION

On appeal, Nye challenges only that portion of the trial court's order sustaining Cervantes's demurrer with respect to Nye's petition to nullify Cervantes's marriage to Brooks.⁴

A. Legal standards on review from the sustaining of a demurrer

Because a demurrer tests the legal sufficiency of the complaint, we review the complaint de novo to determine whether it contains sufficient facts to state a cause of action: "In reviewing an order sustaining a demurrer, we assume well-pleaded factual allegations to be true and examine the complaint de novo to determine whether it alleges

⁴ In doing so, Nye has forfeited any argument that the trial court's order sustaining the demurrer as to the cause of action for fraud was erroneous.

facts sufficient to state a cause of action on any legal theory. [Citation.]" (*Kyablue v. Watkins* (2012) 210 Cal.App.4th 1288, 1292.)

When a demurrer is sustained without leave to amend, we must determine whether the trial court abused its discretion in denying leave to amend. "It is an abuse of discretion to deny leave to amend if there is a reasonable possibility that the pleading can be cured by amendment." (*Lee v. Los Angeles County Metropolitan Transportation Authority* (2003) 107 Cal.App.4th 848, 854.) The burden falls on the plaintiff to "show what facts he or she could plead to cure the existing defects in the complaint." (*Boyd v. Freeman* (2017) 18 Cal.App.5th 847, 853–854.)

B. *Analysis*

In the portion of Nye's complaint addressing her "Petition for Nullity of Marriage" (boldface & some capitalization omitted), Nye alleges that Brooks's marriage to Cervantes is voidable and may be considered a nullity. Specifically, Nye complains that Brooks lacked the mental capability to consent to a marriage, given the doctors' determination that he lacked the capacity to make decisions for himself. Nye further alleges that Cervantes removed Brooks from his family and friends in order to defraud Brooks of his assets.

Nye contends on appeal that "[f]or the purposes of this case, the relevant grounds for annulment deal with fraud and unsound mind," as expressed in Family Code⁵ section 210, subdivisions (c) and (d).⁶

Family Code section 2210 provides that "[a] marriage is voidable and may be adjudged a nullity if" any of a number of conditions "existed at the time of the marriage." Among the conditions listed as providing a basis for nullifying a marriage is the condition that "[e]ither party was of unsound mind, unless the party of unsound mind, after coming to reason, freely cohabited with the other as his or her spouse" (§ 2210, subd. (c)), and the condition that "[t]he consent of either party was obtained by fraud, unless the party whose consent was obtained by fraud afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as his or her spouse" (§ 2210, subd. (d)).

Section 2211 accompanies section 2210 and establishes limitations with respect to the bringing of actions to nullify a marriage, including limitations related to *the time* within which such an action must be brought as well as limitations related to *who* may bring such actions. The introductory sentence of section 2211 provides: "A proceeding to obtain a judgment of nullity of marriage, for causes set forth in Section 2210, *must* be

⁵ Further statutory references are to the Family Code unless otherwise indicated.

⁶ In the complaint, Nye specifically cited section 2210, subdivisions (a) and (d) in support of her contention that the marriage between Cervantes and Brooks may be annulled. However, it is clear that subdivision (a) of section 2210, which was amended effective January 1, 2019, refers to a marriage in which one individual was under the age of 18 at the time of the marriage; the former version of subdivision (a) of section 2210 also related to this circumstance. Neither Brooks nor Cervantes is alleged to have been under the age of 18 at the time of their marriage.

commenced within the periods and by the parties, as follows:" (§ 2211, italics added.) This provision thus unambiguously defines not only the limitations periods for nullity actions based on various grounds, but establishes mandatory standing requirements, as well. The limitations period and standing provisions differ, depending on the ground for annulment invoked. For example, section 2211, subdivision (c) provides that with respect to "causes mentioned in subdivision (c) of section 2210," "[a] proceeding to obtain a judgment of nullity of marriage . . . must be commenced . . . [¶] . . . [¶] . . . by the party injured, or by a relative or conservator of the party of unsound mind, *at any time before the death of either party.*" (Italics added.) Section 2211, subdivision (d) provides that with respect to "causes mentioned in subdivision (d) of Section 2210," a proceeding to nullify a marriage must be commenced "*by the party whose consent was obtained by fraud*, within four years after the discovery of the facts constituting the fraud." (Italics added.)

It is readily apparent from the language of these statutes that Nye has two distinct problems under the statute: (1) for purposes of attempting to annul her brother's marriage to Cervantes under a theory that he was of unsound mind at the time of the marriage, she must have brought the action prior to her brother's death (see § 2211, subd. (c) [with respect to "causes mentioned in subdivision (c) of section 2210," which refers to one party being of unsound mind, a proceeding to nullify the marriage "must be commenced . . . [¶] . . . [¶] . . . at any time before the death of either party"]); and (2) for purposes of attempting to annul her brother's marriage to Cervantes under a theory that he was fraudulently induced to enter into the marriage, she is not an individual who is

entitled to assert the claim (see § 2211, subd. (d) [with respect to "causes mentioned in subdivision (d) of Section 2210," which refers to one party's consent to marriage being induced by fraud, a proceeding to nullify the marriage must be commenced "by the party whose consent was obtained by fraud").

Nye argues on appeal that it "appears to have been left undecided by both the Legislature and the courts" whether "a person who was arguably mentally and legally incompetent to enter into a marriage contract was *also* induced by fraud into that marriage contract." She states that "it would appear to serve the legislative intent by extending standing to appellant, in order to protect her brother's interests and to prevent the fraudster from being wrongfully enriched." Nye essentially takes the position that she should be permitted to pick and choose from the standing requirements for annulling a marriage based on the two conditions that she contends are alleged in the complaint—i.e., that *she* should be permitted to bring an action to annul the marriage (thereby avoiding the requirement that an action to annul a marriage based on the allegation that one party defrauded another must be brought by a party to the marriage) and that she should be permitted to bring an action to nullify the marriage *after* her brother's death (thereby avoiding the requirement that an action to annul a marriage based on the allegation that one party was of unsound mind must be brought before the death of either party to the marriage). Nye also separately argues that public policy "necessitates a finding that this cause of action survives Brooks's death, notwithstanding the language of the statute."

Although the factual allegations of the complaint are troubling, the statutory language demonstrates that the Legislature has made the public policy determinations as

to when a marriage may be annulled and by whom, and it has done so with specific attention paid to each condition that may be invoked in order to annul a marriage. "It is well settled in California that 'the Legislature has full control of the subject of marriage and may fix the conditions under which the marital status may be created or terminated. . . .'" (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1074, quoting *McClure v. Donovan* (1949) 33 Cal.2d 717, 728 (*McClure*).) In *McClure*, the Supreme Court explained: "With the right of action for annulment of a marriage so statutory in nature, *it is for the Legislature to prescribe when and by whom such litigation may be commenced.*" (*McClure, supra*, at p. 728, italics added.)

The Legislature has clearly weighed the various public policies at issue and has determined that certain limitations on marriage nullification actions are appropriate, including specific limitations that prevent Nye from being able to challenge the validity of Brooks's marriage to Cervantes now that Brooks has died. While we can appreciate Nye's sense of frustration as to the circumstances under which the marriage between Brooks and Cervantes took place, we would have to essentially rewrite the applicable statutory provisions and ignore the existing express requirements of these provisions in order to permit Nye to pursue an action to annul Brooks's marriage to Cervantes based on the conditions that she alleges existed at the time of the marriage. Our role is to interpret the statutory language so as to effectuate the purpose of the law that the Legislature has enacted, " 'not [to] rewrite unambiguous statutes.' " (*In re David* (2012) 202 Cal.App.4th 675, 682.)

IV.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

AARON, J.

I CONCUR:

BENKE, Acting P. J.

NARES, J.

I concur in the result; however, I write separately to emphasize some disturbing allegations in this case—deemed true on demurrer—that are not contained in the lead opinion.

The opinion notes that two days before marrying Malaina Lucia Cervantes, David Brooks "checked out" of a rehabilitation facility. However, the plaintiff, Marilyn Nye (Brooks's sister) further alleges that Cervantes, who a few days later married Brooks, took him from the rehabilitation center by claiming to be Brooks's "daughter."

The lead opinion states that Dr. Stanley Wilbur is "a local physician who specializes in Internal Medicine." Nye also alleges that Cervantes and Dr. Wilbur took Brooks to Dr. Wilbur's home on February 23, 2017—two days before Cervantes married Brooks there. Brooks lived at Dr. Wilbur's home until March 1, 2017, when Cervantes and Dr. Wilbur brought Brooks to the hospital. At that time (four days after marrying Cervantes), Brooks was "dehydrated, weak, confused, agitated and unable to make decisions for himself."

The opinion also states that between February 23, 2017 and March 11, Nye had no contact with Brooks. However, the complaint additionally alleges that during this period, when Brooks's friends and relatives called him, their calls went to voicemail, and when a relative appeared at the address Cervantes gave him, no one answered the door.

The opinion notes that Brooks and Cervantes were married at Dr. Wilbur's home. However, the complaint also alleges that Cervantes and Dr. Wilbur kept Brooks "secreted" there to effectuate a clandestine marriage, arranged for a minister to perform

the marriage at the home, and "[n]o one else was even informed of the marriage until after David's death." Six weeks before the wedding, "doctors had determined that [Brooks] was too far gone to sign legal documents."

These allegations are egregious. Citing *In re Estate of Gregorson* (1911) 160 Cal. 21, 24 (*Gregorson*), Brooks contends there is a "clear concern" to prevent someone who has "'led an incompetent into a purported marriage'" to profit from his or her own wrongdoing. However, the court in *Gregorson* also states that because the ability to annul such a marriage is "closely limited as to both persons and time . . . the only manner of avoiding them is that provided by the code. If the parties who are alone recognized by the statutes as entitled to have the marriage annulled do not, during its existence, see fit to avoid it, a stranger to the marriage should not be permitted to question its validity in a collateral proceeding." (*Id.* at pp. 26-27.)⁷

The facts alleged in this case may support applying equitable estoppel to preclude Cervantes from asserting that the annulment cause of action is time-barred. However, in light of *Gregorson, supra*, 160 Cal. 21, any change to the time limit established by Family Code section 2211, subdivision (c) appears to require legislative action. By way of example, Texas recognized a family member's difficulty in challenging a marriage before the death of one spouse and allows for postdeath challenges of a marriage's validity if the marriage commenced less than three years prior to the decedent's death and

⁷ Citing *Pryor v. Pryor* (2009) 177 Cal.App.4th 1448, 1459, Brooks concedes that the "statutory scheme for annulment" has not been significantly changed since *Gregorson* was decided in 1911.

the interested person filed the action within one year of the decedent's death. (V.T.C.A., Estates Code, § 123.102; see Comment, *Marrying into Financial Abuse: A Solution to Protect the Elderly in California* (2010) 47 San Diego L.Rev. 227, 256-257.) I would urge the Legislature to consider whether Family Code section 2211, subdivision (c) as currently written adequately protects against financially exploitive marriage scams.

NARES, J.